

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MPJ, MY PERSONAL JET, A.V.V.,

Plaintiff,

v.

AERO SKY, L.L.C.,

Defendant.

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Civil Action No. SA-09-CV-693-XR

ORDER ON MAGISTRATE JUDGE’S REPORT & RECOMMENDATION

On this day, the Court considered the Report and Recommendation of the Magistrate Judge (Docket Entry No. 14). The Court referred motions in the above-styled and numbered cause of action to the Magistrate Judge for initial consideration and for a ruling pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge then recommended that the Court grant Plaintiff’s motion to confirm an arbitration award, deny Defendant’s counter-motion to modify or vacate the arbitration award, sustain and grant Plaintiff’s objection and motion to strike Defendant’s exhibit A, and deny both parties’ request for a hearing. Having considered the report, the Court ACCEPTS the Magistrate Judge’s report and recommendation. Plaintiff’s pending motion to confirm an arbitration award (Docket Entry No. 1) is GRANTED, Defendant’s counter-motion to modify or vacate the arbitration award (Docket Entry No. 5) is DENIED.

Background

Plaintiff MPJ, My Personal Jet, A.V.V. (“MPJ”) and Aero Sky, L.L.C. (“Aero Sky”) entered into an agreement under which Aero Sky would perform scheduled maintenance on MPJ aircraft. A dispute between the parties led to arbitration before the Honorable John J. Specia, a then-retired state District Judge of Bexar County, Texas.

Procedural History

On August 24, 2009, MPJ initiated this case when it sought an order to confirm the arbitration award against Aero Sky. (Mot. for Order Confirming Arbitration Award (Aug. 24, 2009) [Docket Entry No. 1].) Aero Sky filed a counter-motion for the Court to modify or vacate the arbitration award. (Resp. to Mot. for Order Confirming Arbitration Award & Counter-mot. to Modify or Vacate Arbitration Award (Sept. 3, 2009) [Docket Entry No. 5].) The Court referred the motions to United States Magistrate Judge Pamela A. Mathy for a report and recommendation for the Court's consideration. On November 10, 2009, Magistrate Judge Mathy provided the Court with her report and recommendation for this Court's review and consideration. Neither party has objected.

Legal Standard

In reviewing the Magistrate Judge's report and recommendation, the Court must conduct a de novo review of any of the Magistrate Judge's conclusions to which a party has specifically objected. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). As to the portions of the report that are not objected to, the Court needs only to review those portions to determine whether they are clearly erroneous or contrary to law. *Id.*; *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243, 106 L.Ed.2d 590 (1989). A party may serve and file objections to the order within ten days. FED. R. CIV. P. 72(a), (b)(2). In this case, neither party has objected to the report and recommendation, so the Court evaluates the report and recommendation to determine if it is clearly erroneous or contrary to law.

Analysis

The Magistrate Judge evaluated the arbitration award pursuant to the standards outlined in the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1–16. As the Magistrate Judge noted, “the district court’s review of an arbitration award, under the [FAA], is extraordinarily narrow.” *Prescott v. Northlake Christian Sch.*, 369 F.3d 491, 494 (5th Cir. 2004) (internal quotation marks omitted). The Court must confirm the award unless it should be vacated under Section 10 or modified under Section 11 of the FAA. *See* 9 U.S.C. § 9. Sections 10 and 11 provide the exclusive grounds for vacatur and modification. *See* 9 U.S.C. §§ 10–11.

The Magistrate Judge found that Aero Sky has not demonstrated that the award was procured by corruption, fraud or undue means; evident partiality; misconduct on the part of the arbitrator in refusing to hear evidence pertinent and material to the controversy to the prejudice of its rights, or that the arbitrator exceeded his authority. Moreover, the Magistrate Judge found that Aero Sky did not meet the requirements to warrant modification of the award.

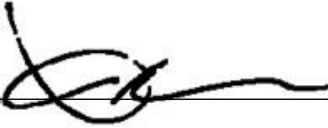
In accordance with the standards of the Federal Arbitration Act, the Magistrate Judge concluded that the Court should confirm the arbitration award. This conclusion is not contrary to law or clearly erroneous.

Conclusion

The Court hereby ACCEPTS the Report and Recommendation of the Magistrate Judge’s Report and Recommendation, GRANTS Plaintiff’s motion to confirm the arbitration award, DENIES Defendant’s cross-motion to modify or vacate the arbitration award, and ACCEPTS the Magistrate Judge’s report and recommendation regarding the related matters involving a motion to strike an exhibit and denying requests for hearing.

It is so ORDERED.

SIGNED this 30th day of November, 2009.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE